

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

United States of America

v.

Spencer Gray

Defendant

No. 04-10115-RCL

**MEMORAMNDUM IN SUPPORT OF COMPENSATION IN EXCESS OF STATUTORY  
MAXIMUM**

Appointed counsel submits this memorandum in support of his claim that compensation in excess of the statutory maximum is justified because the representation in this case was extended and the case itself was complex.

On or about April 8, 2004, a federal grand jury at Boston, Massachusetts returned a seven (7) count indictment, charging Spencer Gray and numerous co-defendants with distribution of cocaine base, in violation of Title 21 U.S.C., § 841(a)(1) and a Playground Zone Violation, in violation of Title 21 U.S.C. § 860(a) (Counts 1 and 7), Distribution of Cocaine Base, in violation of Title 21 U.S.C. § 841(a)(1), and a Playground Zone Violation, in violation of Title 21 U.S.C. § 860(a) and Aiding and Abetting, in violation of Title 18 U.S.C. §2 (Counts 2, 3, and 5) and Distribution of Cocaine Base, in violation of Title 21 U.S.C., § 841(a)(1) and Aiding and Abetting, in violation of Title 18 U.S.C. §2 (Counts 4 and 6). The defendant was named in Counts 2-7.

There was extensive discovery provided by the government, including video and audio tapes of numerous drug transactions by Spencer Gray and other co-defendants taken over a substantial period of time.

The defendant had essentially no criminal record and defense counsel worked diligently on having the defendant released prior to the plea or trial.

The defendant was in fact released after a detention hearing before Magistrate Bowler.

However, the defendant was brought back before Magistrate Bowler, at the request of Pretrial Services due to the fact that there were allegations of violations of conditions of release. The defendant was ultimately released on a bracelet.

After extensive review of discovery and legal research, the defendant submitted to a Pre-plea Presentence Investigation resulting in a Pre-plea Presentence Report.

It was determined that the defendant had met four of the five categories of Safety Valve eligibility, and the defendant was encouraged to make a proffer to the government to make him Safety Valve eligible. This was attempted, however did not succeed.

Further, extensive research was done regarding the penalties of crack versus powder cocaine under the United States justice system.

Extensive time was spent meeting with the defendant, defendant's wife and family.

Ultimately, the defendant was sentenced to fifty-seven (57) months due to the fact that he was unable to cooperate during a proffer immediately prior to sentencing.

Extensive research was done in the area of Booker and Fan-Fan (cite omitted) regarding the guidelines.

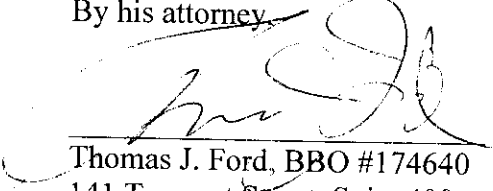
Further research was conducted in the guideline area, both with a Safety Valve and without a Safety Valve.

Further research was done regarding the drug weight and the mandatory minimum.

Total time expended on this case was necessary to afford the defendant effective representation of counsel in a complex and extended case where the law was changing.

The court had indicated had the defendant cooperated, he would have been given close to the mandatory minimum of one (1) year, however defendant's refusal to cooperate resulted in a substantially longer sentence.

Respectfully submitted,  
By his attorney



Thomas J. Ford, BBO #174640  
141 Tremont Street, Suite 400  
Boston, MA 02111  
(617) 542-6082  
(617) 338-4244 Facsimile

Date: April 15, 2005

STATE ATTORNEY OF AND AUTHORITY TOTAL COURT ATTORNEY COUNSEL

1. CIR./DIST./DIV. CODE MAX		2. PERSON REPRESENTED Gray, Spencer		VOUCHER NUMBER																																																																																																																			
3. MAG. DKT./DEF. NUMBER		4. DIST. DKT./DEF. NUMBER 1:04-010115-001	5. APPEALS DKT./DEF. NUMBER		6. OTHER DKT. NUMBER																																																																																																																		
7. IN CASE/MATTER OF (Case Name) U.S. v. Gray		8. PAYMENT CATEGORY Felony	9. TYPE PERSON REPRESENTED Adult Defendant		10. REPRESENTATION TYPE (See Instructions) Criminal Case																																																																																																																		
11. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) If more than one offense, list (up to five) major offenses charged, according to severity of offense. 1) 21 860A=CD.F -- DISTRIBUTE IN OR NEAR SCHOOLS/CONTROLLED SUBSTANCE																																																																																																																							
12. ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix) AND MAILING ADDRESS FORD, THOMAS J. 141 Tremont Street Suite 400 Boston MA 02111  Telephone Number: (617) 542-6082			13. COURT ORDER <input checked="" type="checkbox"/> O Appointing Counsel <input type="checkbox"/> C Co-Counsel <input type="checkbox"/> F Subs For Federal Defender <input type="checkbox"/> R Subs For Retained Attorney <input type="checkbox"/> P Subs For Panel Attorney <input type="checkbox"/> Y Standby Counsel Prior Attorney's Name: _____ Appointment Date: _____ <input type="checkbox"/> Because the above-named person represented has testified under oath or has otherwise satisfied this court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 12 is appointed to represent this person in this case, or <input type="checkbox"/> Other (See Instructions) _____ Signature of Presiding Judicial Officer or By Order of the Court <u>04/15/2004</u> Date of Order      Nunc Pro Tunc Date Repayment or partial repayment ordered from the person represented for this service at time of appointment. <input type="checkbox"/> YES <input type="checkbox"/> NO																																																																																																																				
14. NAME AND MAILING ADDRESS OF LAW FIRM (only provide per instructions)																																																																																																																							
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CLAIM STATUS <input checked="" type="checkbox"/> Final Payment <input type="checkbox"/> Interim Payment Number _____          Have you previously applied to the court for compensation and/or reimbursement for this case? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, were you paid? <input type="checkbox"/> YES <input type="checkbox"/> NO          Other than from the court, have you, or to your knowledge has anyone else, received payment (compensation or anything or value) from any other source in connection with this representation? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, give details on additional sheets.          I swear or affirm the truth or correctness of the above statements.          Signature of Attorney: _____ Date: 4/15/05       </td> </tr> <tr> <td>23. IN COURT COMP.</td> <td>24. OUT OF COURT COMP.</td> <td>25. TRAVEL EXPENSES</td> <td>26. OTHER EXPENSES</td> <td colspan="2">27. TOTAL AMT. 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## TIME &amp; BILLING

Case Name: USA v. Gray  
 Agreed Upon Rate: \$90.00

Date	Narrative	Time
4/15/2004	Initial appearance for both defendants - Spencer Gray & Carl Prescott; Conference with both defendants; Review of criminal records of both defendants; Conference with AUSA Hamilton & Tobin; Research; Review of indictment - all 7 counts; Conference with mother & girlfriend after hearing	2.5
4/16/2004	TC mother; TC Marshall's office; Review of file; Research	1
4/22/2004	Conference w/ AUSA Tobin; View video tape at US Atty's office; Conference w/ Tom O'Brien from pretrial services; Conference w/ family; Review of affidavits & attachments; Review of indictment w/ defendant; Review of client's record; Detention hearing before Magistrate Bowler; Research; Dictation of letter	3.75
4/29/2004	Conference with defendant; TC mother (x2); Conference with defendant - Pretrial Interview; Review of file; Research	1.5
4/30/2004	TC mother re: Thurs Pretrial Interview; Review of file; Research	0.5
5/3/2004	TC Pretrial office re: record; TC mother; Review of file; Research	1
5/10/2004	TC Probation Officer; TC mother; Review of file re: release	1
5/13/2004	TC Pretrial (x2); TC Vicki Jones x2; TC Lillian Jones (x2); Review of file	0.5
5/14/2004	Review of government's Motion for Protective Order & Protective Order; Research; Review of file; Review of discovery materials	1.5
5/14/2004	Review of Memorandum & government's order motion for detention (17 pages); Research re: same	0.5
5/25/2004	Review of discovery materials provided by the government	2.5
6/1/2004	Review of discovery provided by the government pursuant to CP 16 and Rules 116.1(c) and 116.2	1.5
6/11/2004	Review of Assented-to Motion to exclude time; Review of memorandum and reported investigation (discovery); Further review of protective order; TC Judge Bowler's clerk; TC Vicki Jones x3 re: rescheduling detention hearing; further research re: discovery	1.5
6/15/2004	TC A.U.S.A.; TC Clerk; TC Pretrial; TC girlfriend; Research	1
6/17/2004	TC Vicki Jones; Review of file, TC Pretrial	0.35
6/21/2004	TC Vicki Jones; TC former employer, TC probation officer Josh Ulrich; Review of file	0.5
6/22/2004	TC former employer; TC Girlfriend; Review of report from Pretrial Services re: being released on certain conditions	0.5
6/23/2004	Review of file - all matters, preparation for continuation of detention hearing; TC mother; TC girlfriend; TC Lillian Jones; TC A.D.A.; Research	2.2

6/24/2004	Preparation for detention hearing; TC AUSA Tobin; TC Bob Riley; PTS; Review of correspondence from Donovan Walker and Michael Cronin; Review of affidavit of special agent; Hearing before Magistrate Bowler; Conference with family before and after hearing	2.75
6/29/2004	Further review of discovery materials	1.75
7/21/2004	Review of discovery materials; Research; TC client re: appointment and preparation for same	1.5
8/2/2004	Status conference before Bowler - case continued until Thursday, September 16 at 2:30pm for a final status conference; Prep for same	1
8/3/2004	Further review of discovery materials	1.5
8/6/2004	Office conference with client; Review of indictment, detention affidavit, and discovery materials; Review of file	1.25
9/16/2004	TC A.U.S.A. David Tobin; TC defendant; Review of file; Preparation for status conference; Research, appearance before Judge Bowler in court re: status conference - case continued until Nov. 2 further status, file motion for pre-plea presentence review	2.25
9/24/2004	Review of memorandum; Review of file; Research; Review of detention order	1.5
9/28/2004	Review of memorandum; Review of file; Research; Review of detention order	1.25
10/5/2004	Office conference with client; Review of memorandum re: probation violations; Research	1
10/6/2004	Review of file; Preparation for hearing; Appear before Magistrate Bowler re: conditions of probation; Conference with defendant and wife; Review of memorandum; Conference with probation officer Josh Ulrich; Research	1.5
11/1/2004	TC A.U.S.A.; TC Pre-trial; TC defendant (x2); TC defendant's girlfriend (x3); Review of file; Preparation of order of the court; Preparation for status conference	2.75
11/2/2004	TC client (x2); TC wife (x2); TC pre-trial (x1); TC A.U.S.A Dave Tobin (x1); Appear before Magistrate Bowler for arraignment and superceding indictment; Research for motion to dismiss; Interview with pre-trial re: conditions of release; Conference with defendant	2.75
11/5/2004	Review of Co-defendant Karl Prescott's motion to dismiss; Research; Review of co-defendant's motion pursuant to Fed R. Crim. P. 7d	1.75
11/10/2004	Research re: motion to dismiss indictment; TC Dave Tobin; TC John Riley; Review of file	1.5
11/12/2004	TC Pretrial (x2); Review of motions; Drafting of Motion, Pursuant to Fed. R. Crim. P. 7(d), to Strike Surplusage from the Superseding Indictment, Memo in Support of Defendant's Motion to Strike Surplusage from the Superseding Indictment, and Assented to Motion to Change Residence	2.25
11/23/2004	TC John Riley; Review of file; Research re: discovery	1
11/29/2004	Office conference with defendant; Probation interview with Kelly Foster at U.S. Probation Office	3
12/17/2004	TC Vicki Jones; Review of file; Review of form; Review of e-mail; Dictation of letter	0.25
1/5/2005	Review of Defendant's Approval for Presentence Investigation Before Conviction of a Plea of Guilty; Dictation of letter	0.2
1/24/2005	TC Client; Review of file; Preparation for status hearing; TC Probation officer; TC AUSA Dave Tobin; Research re: Booker	1.25
1/25/2005	Appearance in Federal District Court in before Judge Lindsay re: Status Conference; Case continued until March 8, 2005; Conference with co-counsel George Gormely; Research re: guidelines, safety valve, and Booker	1.75
1/27/2005	Review of Presentence Report; TC Probation Officer.; Research	1.75

2/9/2005	Further research re: Booker, Fan-Fan re: sentencing; Review of file; Research; TC Probation officer; Dictation of letter; Further review of Presentence Report	2.5
3/3/2005	Review of revised Presentence Report; Dictation of letter; Review of file; Research	1.1
3/22/2005	Review of United States Sentencing Commission Report re: crack cocaine v. powder cocaine (110 pages); Review of guidelines; Office conference with Spencer Gray and mother; Research re: same	3.75
3/24/2005	Research re: sentencing; Review of file; Research re: cocaine v. crack-cocaine	2.5
3/30/2005	TC defendant (x2); Review of file	0.75
3/31/2005	Review of Presentence Report; Office conference with defendant; Review of letters; Dictation of letter to Judge; TC probation officer; Research; Preparation for sentencing - Sentencing continued at the request of the court until April 6, 2005 and 9 am; Review of U.S. Sentencing Commission Report re: powder cocaine v. crack cocaine	3.25
4/5/2005	Office conference with defendant; preparation for sentencing and plea; TC Dave Tobin (x2); TC U.S. Probation officer Kelly Foster (x2); Research re: safety valve, re: guidelines, re: cocaine and federal sentencing policy (106 pages)	2.5
4/6/2005	Review of materials; Preparation for plea and sentencing; Conference with defendant, mother, step-mother, and wife at U.S. District Court; Conference with A.U.S.A. Tobin; Plea before Judge Lindsay and argument re: custody; Sentencing continued until 4/12/2005 at 11:30am; Research	3.75
4/8/2005	Review of file; Preparation for Proffer and Sentencing; TC Kelly Foster; TC Dave Tobin; Research	1.5
4/11/2005	Review of file; Preparation for sentencing; TC AUSA David Tobin re: Proffer research; Review of presentence report	1.25
4/12/2005	TC Dave Tobin; Review of presentence report; Review of file in its entirety; Review of U.S. Sentencing Commission Report (105 pages); Conference with defendant (x2); Conference with AUSA and two case agents and Proffer meeting at the U.S. Attorney's office; Conference with wife and step-mother; Plea before Lindsay, J.; Conference with probation officer Kelly Foster; Sentencing	4

Total 88.1  
x \$90.00 per hour  
**Total \$7,929.00**